



Department of Justice

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JUSTICE DEPARTMENT BLOCKS ILLEGAL ARRANGEMENT BETWEEN TWO PESTICIDE COMPANIES

WASHINGTON, D.C. -- The Department of Justice filed suit today to block an illegal and exclusive licensing arrangement between a German company that is one of the world's largest developers and manufacturers of pesticide ingredients, and the leading U.S. producer and distributor of household insecticide sprays. The arrangement would have lessened competition in the \$450 million a year U.S. household insecticide market, the Department said.

In a civil lawsuit filed today in U.S. District Court in Rockford, Illinois, the Department's Antitrust Division charged Bayer A.G. and S.C. Johnson & Co. Inc. of Racine, Wisconsin, with restraining U.S. trade. At the same time, the Department filed a consent decree that, if approved by the court, would settle the matter.

According to the complaint, in March 1988 Johnson, which has a 45 to 60 percent share of the American household insecticide market, persuaded Bayer not to enter the U.S. market but, instead, to license cyfluthrin, a newly developed and patented

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insecticide ingredient, exclusively to Johnson. Cyfluthrin retains its killing power against insects longer than active ingredients previously available.

The agreement also gave Johnson first refusal on exclusive licenses for any future active ingredients developed by Bayer for household insecticides.

The agreement, according to the complaint, substantially reduced Bayer's incentives to compete with Johnson in the manufacture and sale of household insecticides in the United States and lessened competition generally in the U.S. household insecticide market.

In the consent decree filed with the complaint, Johnson and Bayer agreed to refrain from allocating or dividing territories or markets for household insecticides.

The decree allows Johnson to continue to market cyfluthrin-containing products on a nonexclusive basis, but requires Bayer to offer other household insecticide manufacturers cyfluthrin licenses on reasonable and nondiscriminatory terms. The judgment also safeguards access by Johnson's competitors to active ingredients that Bayer and other active ingredient developers may later introduce.

Anne K. Bingaman, Assistant Attorney General in charge of the Antitrust Division, said, "This case demonstrates our determination to maintain competitive markets while simultaneously protecting intellectual property rights. The cozy

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arrangement that Bayer and Johnson maintained is unacceptable in a highly concentrated market such as the one for household insecticides."

Johnson obtains the active ingredients for its products from other firms. Bayer, one of only a handful of firms in the world that engages in research and development of new active ingredients for household insecticides, sells household insecticides in other countries but not in the U.S., the Department said.

According to the complaint, Bayer would have distributed cyfluthrin in the U.S. market through its U.S. subsidiary, Miles Inc. of Elkhart, Indiana.

Household insecticides are products used to kill a variety of flying and crawling insects in homes, notably roaches, crickets, mosquitos, ants, fleas, and flies.

As required by the Tunney Act, the proposed consent decree will be published in the Federal Register, together with the Department's competitive impact statement. Any person may submit written comments concerning the proposed consent decree during a 60-day comment period to Gail Kursh, Chief, Professions and Intellectual Property Section, Antitrust Division, U.S. Department of Justice, Room 9903, 555 Fourth Street, N.W., Washington, D.C. 20001 (202-307-5799). At the conclusion of the 60-day comment period, the federal district court in Rockford,

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Illinois may enter the consent decree upon finding that it serves the public interest.

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